

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

**SERVICES AND SUPPORT AGREEMENT
FOR FIRE DEPARTMENT INSPECTIONS**

This Services and Support Agreement (“Agreement”) is made effective as of _____, 2013 (“Effective Date”), by and between **FIRE RECOVERY USA, LLC**, a California limited liability company (“Company”), and **CITY OF DURHAM** (“City”). The Company and City are referred to herein individually as a “party” and collectively as the “parties.”

R E C I T A L S

WHEREAS, Company engages in the business of performing billing services (“Company Services”) for fire departments in connection with fire inspections and/or permits performed by department personnel to be recorded and processed through an Apple iPad application called FHinspector;

WHEREAS, City seeks the services of Company to assist with the billing for services that City provides in connection with these company inspections and/or permits; and

WHEREAS, Company and City desire to enter into this Agreement to document their agreements regarding the Company Services to be provided to City.

NOW, THEREFORE, in consideration of the mutual representations, warranties and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Company and City agree as follows:

**ARTICLE 1
ENGAGEMENT**

1.1. Engagement: City hereby engages Company to provide the Company Services described in Article 4 herein, as well as the Equipment and services set out in Schedule B, in order to provide an integrated solution of hardware and services to facilitate billing and collection of City fire inspection fees. City hereby accepts such engagement, all on the terms and conditions set forth herein. Company will determine the method, detail and means of performing its obligations set out in this Agreement.

**ARTICLE 2
REPRESENTATIONS AND WARRANTIES**

2.1. Representations and Warranties of Company: Company hereby represents and warrants to City that, at all times during the term of this Agreement, Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of California, duly registered to do business in the state of North Carolina.

2.2. Representations and Warranties of City: City hereby represents and warrants to Company that, at all times during the term of this Agreement, City is a municipal corporation with an organized fire department established pursuant to the laws and ordinances of the state in which City is located.

ARTICLE 3 COMPANY STATUS AND QUALIFICATIONS

3.1. Independent Contractor: Company enters into this Agreement, and will remain throughout the term of the Agreement, as an independent contractor. Company agrees that it will not become an employee, partner, or principal of City while this Agreement is in effect.

3.2. Payment of Income Taxes: Company is responsible for paying when due all income taxes, including estimated taxes, incurred as a result of the compensation paid by City to Company for services rendered under this Agreement. On request, Company will provide City with proof of timely payment. Company agrees to indemnify City for any claims, costs, losses, fees, penalties, interest, or damages suffered by City resulting from Company's failure to comply with this provision.

3.3. Use of Employees or Subcontractors: Company may, at Company's own expense, use any employees or subcontractors as Company deems necessary to perform the services required of Company by this Agreement. City may not control, direct, or supervise Company's employees or subcontractors in the performance of those services.

3.4. Qualifications: Company represents that it is qualified and has the skills necessary to perform the services under this Agreement in a competent and professional manner, without the advice or direction of City.

3.5. Ownership Interest: Company will have no ownership interest in City.

3.6. No Benefit Contributions: Company shall have no obligation under this Agreement to compensate or pay applicable taxes or provide employee benefits of any kind to any person employed or retained by City.

3.7. Attorney-in-Fact: City appoints Company as City's attorney-in-fact for the following purposes when necessary to perform Company's duties to City under this contract, and only for these purposes:

- (a) Billing and Collections: To bill and receive ("Receipts") all revenue earned by and due to City, in connection with City's provision of inspection and/or permit services provided/rendered at business locations throughout the City's service area, and to receive all Receipts on City's behalf and to sue for and give satisfaction for monies due on account and to withdraw any claims, suits, or proceedings pertaining to or arising out of Company's or City's right to collect such amounts; and
- (b) Endorsement: To take possession of and endorse in City's name any notes, checks, money orders, and any other instruments collected as Receipts.

ARTICLE 4

GENERAL RESPONSIBILITIES OF COMPANY

4.1. Minimum Amount of Service: Company agrees to devote as much time and attention to the performance of the Company Services under this Agreement as may be, in Company's sole discretion, required to accomplish the tasks described herein to accomplish the results for which the Company is responsible under this Agreement.

4.2. Company Services: Company agrees to perform the Company Services related to billing and collecting set forth in the "List of Company Services" attached hereto as Schedule A and incorporated herein by reference.

4.3. Non-Exclusive Relationship: Company may represent, perform services for, and contract with as many additional clients, persons, or companies as Company, in Company's sole discretion, sees fit.

4.4. Time and Place of Performing Work: Company may perform the services under this Agreement at any suitable time and location Company chooses.

4.5. Data Breach. In the event of a data breach or unauthorized access of Customer data, Company will promptly notify Customer of the breach, including details of its nature, the data compromised, mitigation efforts, and corrective actions to be taken by Company.

4.6. Data Assurances.

- (a) Data Ownership. All data uploaded into or created using the Services is owned solely by the Customer, and Company will not access such data unless for the sole purpose of delivering the Services.
- (b) Data Access. Customer may access and retrieve all data stored using the Services at its sole discretion, regardless of who created the content and for what purpose.
- (c) Deletion of Data. Company will permanently delete all data and copies of data from its systems when deleted by the Customer or any End User.

4.7. Insurance: Upon award of the winning bid, Company shall purchase and maintain insurance coverage for not less than the following:

- (a) Commercial General Liability, covering:
 - i. Premises/operations
 - ii. Products/completed operations (two years minimum, from project completion)
 - iii. Broad form property damage
 - iv. Contractual liability
 - v. Independent contractors, if any are used in the performance of this contract
 - vi. City of Durham must be named additional insured.
 - vii. Combined single limit not less than \$1,000,000 per occurrence, with an annual aggregate on not less than \$2,000,000.
- (b) Commercial Auto Liability, covering:
 - i. Symbol 1, all vehicles
 - ii. Combined single limit of \$1,000,000

- iii. City of Durham must be named additional insured
- (c) Professional Liability or Errors and Omissions, covering:
 - i. Covering claims arising out of professional advisement / consultation services performed in connection with this contract
 - ii. Self-insured retentions/deductibles in excess of \$25,000 must be approved by the City Finance Director
 - iii. Combined single limit not less than \$1,000,000 per occurrence;
- (d) Workers' Compensation Insurance, covering:
 - i. Statutory benefits;
 - ii. Covering employees; covering owners partners, officers, and relatives (who work on this contract) (this must be stated on the certificate)
 - iii. Employers' liability, \$1,000,000
 - iv. Waiver of subrogation in favor of the City of Durham
- (e) General Internet Crime Liability/Cyber – Liability
 - i. Covering claims associated with e-business and Internet
- (f) Insurance shall be provided by:
 - i. Companies authorized to do business in the State of North Carolina
 - ii. Companies with Best rating of A-, VII or better.
- (g) Insurance shall be evidenced by a certificate:
 - i. Providing notice to the City of not less than 10 days prior to cancellation or reduction of coverage.
- (h) Certificates shall be addressed to:

City of Durham, North Carolina
Attention: Assistant Chief of Planning and Administration
Durham Fire Department
2008 E. Club Blvd.
Durham, NC 27704

4.8. Assignment: Neither this Agreement nor any duties or obligations under this Agreement may be assigned by Company without the prior written consent of City, which consent shall not be unreasonably withheld.

4.9 Warranties of Company with Regard to Equipment: Company warrants that:

- (a) Company has the legal right to sell the Equipment and Services specified in Schedule B to City;
- (b) Company shall provide City with quiet use and enjoyment of the Equipment during the term of this Agreement and beyond, and shall cause City no suit, trouble or hindrance except as expressly set forth in this Agreement;

- (c) These warranties of Company inure for the benefit of City, its successors and assigns and are binding on Company, its successors and assigns in accordance with the terms of this Agreement. They shall continue in effect and shall be enforceable notwithstanding the assignment of Company's interest in the Equipment or in this Agreement, or the termination of this Agreement, and shall be terminated only by written agreement of Company and City.
 - (d) Assignment of Warranties: to the extent permitted by law, Company hereby irrevocably assigns to City whatever claims and rights, including warranties of the Equipment and Software or Services from third parties, Company may have or acquire from or against any individuals, partnerships, associations, or corporations, including the vendor, that are manufacturers, suppliers or vendors of the Equipment, Software or Services, or any portions thereof. This assignment by Company shall be binding on Company's successors and assigns, and shall continue in effect notwithstanding the assignment of Company's interest in the Equipment or in this Agreement, and shall survive the termination of this Agreement.
- 4.10 Nature of the Agreement: To the extent that any provision of this Agreement gives Company the right to repossess Equipment due to non-payment by City, those provisions and the obligations of City under them shall constitute a security agreement between Company and City for purposes of Article 9 of Chapter 25 (the Uniform Commercial Code) of the North Carolina General Statutes. City shall execute, at Company's request and expense, a financing statement and other related documents that are reasonably necessary under Article 9 to perfect the above-described security interest.

ARTICLE 5

COMPENSATION OF COMPANY

5.1. Compensation for Company Services: All Company Services provided pursuant to this Agreement will be provided in accordance with the terms, including compensation amounts and schedule of remittance, set forth in the "List of Company Services," attached hereto as Schedule A. Schedule B, incorporated herein by reference, specifies training, program and administrative services to be provided pursuant to this Agreement.

5.2. The provisions of Article 11 of this Agreement will govern any dispute associated with compensation.

ARTICLE 6 OBLIGATIONS OF CITY

6.1. Cooperation of City: The City agrees to comply with all reasonable requests of Company and provide access to all documents reasonably necessary to the performance of Company's duties under this Agreement. The City agrees to adopt, implement and enforce policies and procedures as may be necessary to assure City personnel perform the steps necessary to provide Company with a data base of inspection and/or permit businesses in a format acceptable to company and to perform the inspections in a full and complete manner to facilitate the provisions of Company Services.

6.2. Inspection Equipment: The City has elected to have the Company provide the equipment ("Equipment") and services set forth in Schedule B. City understands the full monthly cost of the Equipment will be deducted from Collections as more fully described in Schedule A.

6.3. City and Company agree to the following provisions related to the equipment provided in Schedule B ("Equipment"):

- a.) All Equipment provided to the City will be owned by City with a security interest held by Company until all payments described in Schedule A, Paragraph 7A are received by Company, at which time Equipment shall become the property of City unencumbered by such security interest.
- b.) Until all payments described in Schedule A, Paragraph 7A are received by Company, City will defend Company's rights in the Equipment, at City's cost, and will keep the Equipment free of any legal process, liens, security interests, attachments, levies and executions except for the Company's security interest. City will provide Company immediate written notice of any legal process, liens, attachments, levies or executions and will defend Company against any loss from these causes.
- c.) Equipment is personal property and will remain personal property. Until all payments described in Schedule A, Paragraph 7A are received by Company, City will not incorporate Equipment into real estate and will not cause the Equipment to become part of the City's property.
- d.) Until all payments described in Schedule A, Paragraph 7A are received by Company, City will ensure the Equipment is maintained in good operating condition, and that Equipment is serviced and repaired within the term of the supplier's or manufacturer's warranty, requirements or recommendations for the benefit of Company.
- e.) Until all payments described in Schedule A, Paragraph 7A are received by Company, City will use the Equipment only for FHinspector purposes and will not use the Equipment with any other applications without the prior written approval of Company. Additionally, City will obey all legal and regulatory requirements in the use of the Equipment.

- f.) City will assume the complete risk of loss or damage to the Equipment and will be responsible for the cost of replacing any lost or damaged Equipment.
- g.) If this Agreement is terminated, as set forth in Article 8, within the first nine (9) months of the Agreement or before all payments described in Schedule A, Paragraph 7A are received by Company, City agrees to return the Equipment, freight and insurance prepaid by City, to Company at a location designated by Company in the United States of America within forty-five (45) days of the termination date. The Equipment will be returned in good operating condition. The Equipment will be carefully packed for shipping following all recommendations of the supplier and/or manufacturer as to packing or crating. If the Equipment is not returned in good operating condition, City will reimburse Company for the cost to repair the Equipment within thirty (30) days of receiving an invoice from Company. Alternatively, upon termination of this Agreement within the first nine (9) months of the Agreement or before all payments described in Schedule A, Paragraph 7A are received by Company, City may elect to purchase the Equipment at the then fair market value of the equipment. If City desires to purchase the Equipment, Company and City agree they will establish the fair market value of the equipment within ten (10) days of termination and City will pay Company that fair market value within thirty (30) days after the determination of the fair market value, less the amount of payments for the Equipment already made by the City through deductions from Receipts.
- h.) If Company wishes to purchase insurance to protect the Equipment from the risk of loss or damage during the first nine (9) months of the Agreement or before all payments described in Schedule A, Paragraph 7A are received by Company, City agrees to cooperate and respond to reasonable requests to help Company arrange for that coverage.

6.4 Assignment: Neither this Agreement nor any duties or obligations under this Agreement may be assigned by City or Company without the prior written consent of the other.

ARTICLE 7

CITY AUTHORIZATION

7.1. Authorization: Notwithstanding other provisions of this Agreement, Company shall obtain authorization from City prior to performing any of the following:

- (a) The sale conveyance, transfer, pledge exchange, assignment, hypothecation, or encumbrance of City's interest in any sums owed to City; and
- (b) All other limitations as stated by the terms of this Agreement.

ARTICLE 8 TERMINATION OF AGREEMENT

8.1. Termination on Notice: Notwithstanding any other provision of this Agreement, either party may terminate this Agreement at any time by giving sixty days (60) written notice to the other party. Unless earlier terminated as set forth below, this Agreement shall be effective as of the date first set out above and shall continue for a period of two (2) years thereafter. This Agreement shall automatically renew for successive one (1) year periods, unless either party provides written notification to the other party of its decision not to renew this Agreement.

8.2. Termination on Occurrence of Stated Events: This Agreement will terminate automatically on the occurrence of any of the following events;

- (a) Bankruptcy or insolvency of either party;
- (b) The assignment of this Agreement by either party without the consent of the other party.

8.3. Termination for Default: If either party defaults in the performance of this Agreement or materially breaches any of its provisions, the non-breaching party may terminate this Agreement by giving written notification to the breaching party. Termination will take effect immediately on receipt of notice by the breaching party or five days (5) after mailing of notice, whichever occurs first. For the purposes of this paragraph, material breach of this Agreement includes, but is not limited to, the following:

- (a) Company's failure to complete the services specified in the Description of Services;
- (b) City's material breach of any representation, warranty or agreement contained in this Agreement;
- (c) Company's material breach of any representation, warranty or agreement contained in this Agreement;
- (d) City's performance of inspections falls below the levels set forth on Schedule A.

ARTICLE 9 PROPRIETARY RIGHTS

9.0 Confidential Information: Any written, printed, graphic, or electronically or magnetically recorded information furnished by City for Company's use are the sole property of City. This proprietary information includes, but is not limited to, customer requirements, customer lists, marketing information, and information concerning the City's employees, products, services, prices, operations, and subsidiaries. Company will keep this confidential information in the strictest confidence, and will not disclose it by any means to any person except with the City's approval, and only to the extent necessary to perform the services under this Agreement. This

prohibition also applies to Company’s employees, agents, and subcontractors. On termination of this Agreement, Company will return any confidential information in Company’s possession to City.

**ARTICLE 10
INDEMNIFICATION**

10.1. Indemnification by City: City shall indemnify Company and hold it harmless from any and all liability, including reasonable attorney’s fees, caused by or resulting from (i) any acts or omissions of City or any officer, director, agent, or employee thereof.

10.2. Indemnification by Company: Company shall indemnify City and hold it harmless from any and all liability, including reasonable attorneys’ fees, caused by or resulting from (i) the acts or omissions of Company or any officer, director, agent, or employee thereof.

**ARTICLE 11
GENERAL PROVISIONS**

11.1. Notices: Any notices authorized to be given hereunder shall be in writing and deemed given, if delivered personally or by overnight courier, on the date of delivery, if a Business Day, or if not a business day, on the first Business Day following delivery, or if mailed, three days after mailing by registered or certified mail, return receipt requested, and in each case, addressed, as follows:

If to the Company to:

Fire Recovery USA, LLC
2271 Lava Ridge Court. Suite 120
Roseville, CA 95661
Attention: Craig Nagler

with a copy to:

The Watkins Firm, APC
4520 Executive Drive, Suite 105
San Diego, California 92121
Attention: Chris Popov, Esq.

If to City to:

Durham Fire Department
2008 E. Club Blvd.
Durham, NC 27704
Attention: Fire Chief

with a copy to:

Durham Fire Department____
2008 E. Club Blvd._____
Durham, NC 27704_____
Attention: Asst. Chief of Planning and
Operations.

Or, if delivered by telecopy, on a Business Day before 4:00 PM local time of addressee, on transmission confirmed electronically, or if at any other time or day on the first Business Day succeeding transmission confirmed electronically, to the facsimile numbers provided above, or to such other address or telecopy number as any party shall specify to the other, pursuant to the

foregoing notice provisions. When used in this Agreement, the term “Business Day” shall mean a day other than a Saturday, Sunday or a day on which commercial banks in Sacramento, California are generally closed for business.

11.2. Waiver; Amendments: This Agreement, and the Transaction Documents, (i) set forth the entire agreement of the parties respecting the subject matter hereof, (ii) supersede any prior and contemporaneous understandings, agreements, or representations by or among the parties, written or oral, to the extent they related in any way to the subject matter hereof, and (iii) may not be amended orally, and no right or obligation of any party may be altered, except as expressly set forth in a writing signed by such party.

11.3. Counterparts: This Agreement may be signed in several counterparts.

11.4. Expenses: Each party shall bear its own expenses incurred with respect to the preparation of this Agreement and the consummation of the transactions contemplated hereby.

11.5. Judicial Reference: (i) This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection. (ii) If the Contractor is not a natural person (for instance, the Contractor is a corporation or limited liability company), this subsection (ii) applies. “Agent for Service of Process” means every person now or hereafter appointed by the Contractor to be served or to accept service of process in any State of the United States. Without excluding any other method of service authorized by law, the Contractor agrees that every Agent for Service of Process is designated as its non-exclusive agent for service of process, summons, and complaint. The Contractor will instruct each Agent for Service of Process that after such agent receives the process, summons, or complaint, such agent shall promptly send it to the Contractor. This subsection (ii) does not apply while the Contractor maintains a registered agent in North Carolina with the office of the N. C. Secretary of State and such registered agent can be found with due diligence at the registered office.

11.6. Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

11.7. Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

11.8. Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

11.9. Assignment. Successors and Assigns. Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to

payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

11.10 Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.

11.11 Notice of City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

11.12 EEO Provisions. During the performance of this Contract the Contractor agrees as follows: (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The contractor shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Contractor ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

11.13 SDBE. The Contractor shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the contractor to comply with that article shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that article, this contract, and State law. The Participation Plan submitted in accordance with that article is binding on the Contractor. Section 18-59(f) of that article provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the

contract, the City Manager shall notify the Contractor in writing of the deficiencies. The contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies.” It is stipulated and agreed that those two quoted sentences apply only to the contractor’s alleged violations of its obligations under Article III of Chapter 18 and not to the Contractor’s alleged violations of other obligations.

11.14 No Third Party Rights Created. This contract is intended for the benefit of the City and the Contractor and not any other person.

11.15 Principles of Interpretation and Definitions. (1) The singular includes the plural and the plural the singular. The pronouns “it” and “its” include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words “include,” “including,” etc. mean include, including, etc. without limitation. (2) References to a “Section” or “section” shall mean a section of this contract. (3) “Contract” and “Agreement,” whether or not capitalized, refer to this instrument. (4) “Duties” includes obligations. (5) The word “person” includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (6) The word “shall” is mandatory. (7) The word “day” means calendar day. (8) The word “Work” is defined in Section 2. (9) A definition in this contract will not apply to the extent the context requires otherwise.

11.16 Modifications. Entire Contract. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless it is signed by the City Manager, a deputy or assistant City Manager, or, in limited circumstances, a City department director. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

11.17 City’s Manager’s Authority. To the extent, if any, the City has the power to suspend or terminate this contract or the Contractor’s services under this contract, that power may be exercised by City Manager or a deputy or assistant City Manager without City Council action.

11.18 Trade Secrets; Confidentiality. The request for proposals (RFP) section titled “Trade Secrets and Confidentiality” shall apply to any Trade Secrets disclosed to the City during the process leading to the parties’ entering into this Contract (including all of the Contractor’s responses to the RFP). This section (titled “Trade Secrets; Confidentiality”) shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. For purposes of this contract, the word “candidate” in the RFP section just cited shall mean the “Contractor.”

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

COMPANY:

FIRE RECOVERY USA, LLC.
a California limited liability company

By: _____

Name: M. Craig Nagler
Title: Manager

CITY OF DURHAM

By: _____
Thomas J. Bonfield, City Manager

SCHEDULE A

LIST OF COMPANY SERVICES

1. Company agrees to bill the responsible party on the City's behalf for fire inspection and/or permit services rendered by the City and recorded and processed by Company. The inspection and/or permit fees are listed in Schedule C, but may change over time. City will provide written notice to Company of changes to its fee schedule.
2. Company will provide, as a normal matter of business: processing and invoicing of inspections, permits or other City services for which fees are charged and which are to be collected by Company ("City Fees"), and submission to the responsible party for payment; receipts of monies deemed due to the City; payments of the agreed upon amounts of said monies to City; and reporting of progress via InspectionHub.
3. Company will assure the equipment used by the City to perform inspections and/or permits and related City Fee services are properly loaded with the appropriate software and will provide on-going training and support to the City in the use of the equipment and software.
4. Company agrees to bill to the best of its ability all City Fees owed to the City and provided to Company by the City. Each inspection account will be sent an invoice from Fire Recovery USA, LLC's billing platform for the inspection services provided by the City of Durham Fire Department. If an email account is provided for an inspection account the invoice will be delivered by email and if not the invoice will be mailed through the United States Post Office.

The invoice will describe the various payment options. The inspection account may choose to pay by check, by credit card or by e-check.

If the payment is made by check, the payment will be routed to a lock box account in Atlanta, Georgia at Wells Fargo Bank where it will be processed and the money will be deposited into an account called "Fire Recovery USA, LLC Trust Account". The bank will provide an electronic file of each day's transactions which will be posted to Fire Recovery USA, LLC's RecoveryHub to reflect the payment activity for that day. The funds will remain in the Trust Account until the end of each month at which time the funds will be distributed to the City of Durham and Fire Recovery USA, LLC as set forth in the contract.

If the payment is made by credit card or e-check, the payment will run through Fire Recovery's Authorize.net merchant service account and will be deposited into Fire Recovery USA, LLC's trust account at Redding Bank of Commerce in Roseville, California. RecoveryHub is programmed to process these payments and post the activity to the website as each payment transaction takes place. The funds will remain in the Trust Account until the end of each month at which time the portion of the funds due the City of Durham will be transferred to the Wells Fargo account in Atlanta for distribution

to the City.

If, at any time during each month, representatives of the City of Durham believe the City's accumulated balance in the trust accounts has reached a level that exceeds their risk tolerance, those representatives may request Fire Recovery USA, LLC to forward funds to the City to reduce the City's exposure to acceptable levels, and Fire Recovery USA, LLC will honor those requests.

5. Company will not begin litigation against a person or entity without prior written approval by the City.
6. Company agrees to remit to City the full amount collected for each City Fee less a processing fee of Eighteen Dollars and Fifty Cents (\$18.50) for each paid inspection. Additionally, if a partial payment is received, the \$18.50 charge will be pro-rated to the percentage received.
7. In addition to the per inspection fees charged pursuant to paragraph 6 above, City agrees to pay for the Equipment and Services set forth in Schedule B in the following manner:

A.) The total Equipment and Service costs for the first year of the Agreement, described in Schedule B, are Eighteen Thousand Five Hundred and Sixteen Dollars (\$18,516). This balance will be paid over the first nine months of the Agreement.

During months one (1) through three (3) of the Agreement City will allow Company to deduct Six Thousand Five Hundred and Sixteen Dollars (\$6,516) from the first proceeds of inspection payments during this period until the balance is paid in full. All collections in excess of Six Thousand Five Hundred and Sixteen Dollars (\$6,516) during months one (1) through three (3) will be remitted to the City in accordance with paragraph 8 below.

During months four (4) through six (6) of the Agreement City will allow Company to deduct Six Thousand Dollars (\$6,000) from the first proceeds of inspection payments during this period until the balance is paid in full. All collections in excess of Six Thousand Dollars (\$6,000) during months seven (7) through nine (9) will be remitted to the City in accordance with paragraph 8, below.

During months seven (7) through nine (9) of the Agreement City will allow Company to deduct Six Thousand Dollars (\$6,000) from the first proceeds of inspection payments during this period until the balance is paid in full. All collections in excess of Six Thousand Dollars (\$6,000) during months seven (7) through nine (9) will be remitted to the City in accordance with paragraph 8, below.

B.) The total Equipment and Service costs for the second year of the Agreement, described in Schedule B, are Six Thousand and Forty-Eight Dollars (\$6,048).

City will allow Company to deduct this balance from the first proceeds of inspection payments during the Second year of the Agreement until the balance is paid in full. All

collections in excess of this balance for the second year of the Agreement will be remitted to the City in accordance with paragraph 8, below.

C.) If, at any time during the course of this Agreement, Company's inspection collections on behalf of the City are not sufficient to cover any amounts due in paragraphs 7 A.) and/or 7 B.) Company reserves the right to invoice the City for any deficiency owed to Company and will be entitled to payment from the City within thirty (30) days of the invoice date.

8. Company agrees to pay the funds due to the City for its inspections and/or permits on a monthly basis, within seven (7) working days after the close and accounting of the monthly billing cycle. City may also request payment as described in paragraph 4.
9. Company agrees to make reports available via InspectionHub, a password protected website, for the City which will set forth the status of all inspections and/or permits and provide an accounting of all payments and amounts due the City under the terms of this Agreement.
10. Company will not be responsible for, nor accept any liability for, any erroneous, invalid, or illegal inspections or permits performed by City.
11. Parties acknowledge a critical component to the success of the billing effort is the acquisition by the City of the necessary contact information for the responsible party at each inspection and/or permit location to whom the invoice will be sent. The City agrees to obtain, for each business location, the e-mail address and telephone number for the responsible party for payment. If the City does not maintain an 80% success rate for obtaining accurate contact information, the Company reserves the right to charge a fifteen dollar (\$15) processing charge for attempting to identify the responsible party, whether that effort is successful or not. If this fee is charged by the Company the total fee for each month will be documented and subtracted from the monthly payment set forth in paragraph 7, above.
12. City will, to the extent it deems appropriate and necessary, expend the resources and take the required actions to obtain payment for all invoices that remain unpaid after sixty (60) days of the invoice date and arrange for those payments (net of collection fees, if any) to be forwarded to the Company for processing under the terms of this Agreement. The \$18.50 charge will be pro-rated to the percentage received.

SCHEDULE B

SCHEDULE OF EQUIPMENT AND SERVICE COSTS

<u>Year 1</u>	<u>Units</u>	<u>Each</u>	<u>Subtotal</u>
Apple iPad with Retina display (Wi-Fi, + Cellular, 16gb)	12	\$629	\$7,548
2-yr Apple Warranty	12	\$80	\$960
Otterbox Hard Case	12	\$80	\$960
Verizon Service @ \$25/month	12	\$300	\$3,600
iPad Deployment & Setup Costs	12	\$96	\$1,152
iPad Maintenance Costs	12	\$108	\$1,296
Training - iPad billing and tracking	1	\$3,000	<u>\$3,000</u>
Subtotal Of Above			\$18,516

<u>Equipment Cost 2nd Year</u>	<u>Units</u>	<u>Each</u>	<u>Subtotal</u>
Verizon Service @ \$25/month	12	\$300	\$3,600
iPad Service Costs	12	\$96	\$1,152
iPad Maintenance Costs	12	\$108	<u>\$1,296</u>
Total Year 2 Equipment Costs			\$6,048

SCHEDULE C

CITY OF DURHAM FIRE INSPECTION FEES

Follow-Up Inspection per visit (Reinspection Fee)	\$65
Inspection Tier 1: 0-999 sq ft	45
Inspection Tier 2: 1000-2499 sq ft	65
Inspection Tier 3: 2500-9999 sq ft	100
Inspection Tier 4: 10,000-49,999 sq ft	170
Inspection Tier 5: 50,000 + sq ft	300
Complaint Investigation, Life Safety	500
Complaint Investigation, All Others	75
Work Without A Permit	500
Commercial Cooking Hood Inspection	50

PERMITS

01	Airports, Heliports, and Helistops	\$75
02	Bowling Pin & Alley Resurfacing & Refinishing	75
03	Cellulose Nitrate Plastic (Pyroxylin)	150
04	Combustible Fibers	75
05	Compressed Gases	75
06	Crude Oil Production	75
07	Cryogenic Fluids	75
08	Dry Cleaning Plants	75
09	Blasting (explosives) 60 Day Permit	250
10	Blasting (explosives) 30 Day Extension (for above)	75
11	Discharge of fireworks (1 day)	150
12	Flammable Finishes	150
13	Fumigation & Thermal Insecticide Fogging	75
14	Hazardous Materials Class A (1-55 gallons or 1-500 pounds)	75
15	Hazardous Materials Class B (56-550 gallons or 501-5000 pounds)	150
16	Hazardous Materials Class C (551-5000 gallons or 5001-50,000 pounds)	250
17	Hazardous Materials Class D (over 5000 gallons or over 50,000 pounds)	325
18	High Piled Combustible Stock	75
19	Liquified Natural Gas (LNG)	75
20	Liquified Petroleum Gas	75
21	Lumber Storage	150
22	Magnesium	150
23	Mechanical Refrigeration	75
24	Motion Picture Projection	75
25	Ovens	75
26	Places of Assembly (more than 50)	75
27	Repair Garage (less than 5000 sq ft)	75
28	Repair Garage (more than 5000 sq ft)	150

29	Erection of Tents and Air Supported Structures (60 days)	75
30	Tire Rebuilding Plant	150
31	Wrecking Yards, June Yards, Waste Handling Plants	75
32	Construction Burning (30 days)	250
33	Construction Burning 15 day extension (for above)	75
34	Installation or Removal of any AGST or UGST Tank (per site)	250
35	Tent and Assembly (60 Days)	150
36	Welding and Cutting (365 days)	75
37	Mall Displays (Auto/Boat/Gas Powered EQT) (365 days)	75
38	Kiosk Displays, Booth, Concession EQT (365 days)	75
39	Short Term After Hours (60 days) (1 time)	75
40	Tent and Assembly After Hours (60 days) (1 time)	150
41	Bonfire (1 day)	150
50	General Permit (90 days)	75
52	ALL OTHER PERMITS REQUIRED BY TECHNICAL CODE NOT LISTED ABOVE	75